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July 30, 1997

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Petition for Expedited Rulemaking of LCI International Telecom. Corp. and Competitive Telecommunications Association to Establish Technical Standards for Operations Support Systems – Docket No. CPD 96-98, RM 9101

Dear Mr. Caton:

Transmitted herewith on behalf of the Independent Telephone & Telecommunications Alliance are an original and four (4) copies of its Reply comments in the above-referenced proceeding. In addition, a copy of the Reply Comments is being served on the International Transcription Services, and two (2) copies and an electronic copy are being served on Ms. Janice M. Myles of the Common Carrier Bureau.

If there are any questions concerning this matter, please contact me.

Sincerely,

R. Paul Margie

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Expedited Rulemaking of	)	CC Docket No. 96-98
LCI International Telecom. Corp. and	)	RM 9101
Competitive Telecommunications Association	)	
to Establish Technical Standards for	)	
Operations Support Systems	)	

To: The Commission

REPLY COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

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To: The Commission

REPLY COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance ("ITTA") hereby files its reply to comments on the Petition for Expedited Rulemaking filed by LCI International and the Competitive Telecommunications Association on May 30, 1997 ("Petition").[1] ITTA submits that the Commission action urged by petitioners regarding the adoption of uniform national standards and performance requirements for operations support services ("OSS") is both unauthorized by the Telecommunications Act of 1996[2] and unnecessary in light of ongoing industry efforts. As demonstrated in the comments and explained below, the establishment of minimum national standards together with an enforcement mechanism as demanded by petitioners would require incumbent local exchange carriers ("ILECs") to provide competitive

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[1] *See* Public Notice DA No. 97-1211, rel. June 10, 1997.

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.* ("Telecommunications Act").

local exchange carriers ("CLECs") with different and superior quality OSS than they provide to themselves -- a requirement flatly rejected by the Eighth Circuit as inconsistent with the plain language of the Telecommunications Act. Furthermore, the relief requested by petitioners is unnecessary and would, in fact, harm the public interest by disrupting privately negotiated interconnection agreements, ongoing state proceedings and the activities of industry standard-setting bodies addressing OSS issues.

Accordingly, the Commission should dismiss the Petition. But, if the FCC nonetheless determines to grant any part of the Petition, it should as a minimum take into account the special circumstances and interests of mid-size telcos such as the ITTA member companies. In doing so, the Commission should refuse to impose a unitary set of national standards that would unduly burden mid-size telcos and encumber both such telcos and state commissions with otherwise unnecessary exemption proceedings.

I. INTRODUCTION AND SUMMARY

The Eighth Circuit has now confirmed that the Commission lacks jurisdiction to grant the relief sought by petitioners. The Court made clear that the Telecommunications Act does not require incumbent LECs to provide superior quality services to their competitors and that the promotion of local competition under Section 251 is fundamentally a matter of state concern fenced off from the FCC by Section 2(b). Accordingly, neither Section 251 nor other provisions in Title II provide the FCC with authority to promulgate rules regarding national standards and minimum requirements for OSS.

Equally important from ITTA's perspective, neither the petitioners nor commenters supporting FCC intervention acknowledge that the Commission is further restrained in its

ability to impose burdensome obligations on mid-size telcos such as ITTA's members by Section 251(f). In that section, Congress declared its policy in favor of largely exempting rural and mid-size telcos from the requirements of Section 251 either presumptively or upon a showing of undue burden. The comments of ITTA, Aliant, and Southern New England Telephone Company demonstrate that application of petitioners' proposals to such companies would contravene that policy.

There is similarly no basis upon which the Commission could seek to condition ILEC participation in the interexchange market on the implementation of prescribed OSS standards. Nothing in Section 271, Section 251 or any other provision of the Telecommunications Act empowers the Commission to circumscribe the interexchange activities of mid-size telcos as a sanction for alleged failure to provide OSS capabilities.

If, notwithstanding the foregoing, the Commission decides to seek to promulgate OSS standards and performance criteria, it should recognize and accommodate the unique circumstances facing mid-size telcos. Because of their restricted markets, limited resources, and potential lag in technology, mid-size telcos, if not wholly exempted from any Commission requirements, will require extended implementation deadlines, grandfathering, and other accommodations. Moreover, the Commission must ensure that the costs of any required upgrades are borne by CLECs as the cost causers.

II. THE COMMENTERS FAIL TO IDENTIFY ANY AUTHORITY FOR THE IMPOSITION OF OSS STANDARDS BY THE COMMISSION

A. Section 251 Provides No Basis for Imposing National OSS Standards

In calling for the FCC to impose and enforce national standards for the provision of OSS, petitioners urge an interpretation of Section 251 that not only is flatly inconsistent with that section's plain language, but also was squarely rejected by the United States Court of Appeals for the Eighth Circuit in its recent decision overturning a number of the FCC's local competition rules.[3] The text of Section 251 mentions neither national standards nor the substantial facility upgrades that such standards would require of many incumbent LECs, especially smaller and mid-sized companies. At most, Section 251 requires that CLECs be provided with non-discriminatory access to OSS functionalities that is equivalent to the OSS the ILECs provide themselves.[4]

In its *Iowa Utilities Board* decision, the Eighth Circuit confirmed that Section 251 requires parity and nothing more. The Court struck down two FCC rules which would have required incumbent LECs to provide superior quality interconnection and unbundled network elements to CLECs, upon request, finding that "the FCC violated the plain terms of the Act when it issued these rules."[5] Because Section 251 requires only that incumbent LECs provide

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[3] *See Iowa Utilities Board v. FCC*, 1997 WL 403401 (8th Cir. 1997).

[4] See Comments of the Southern New England Telephone Company, RM-9101 at 8-10 (filed July 10, 1997) ("SNET Comments"); Comments of Teleport Communications Group Inc., CC Docket No. 96-98, RM 9101 at 3-4 (filed July 10, 1997) ("TCG Comments").

[5] *Iowa Util. Bd.*, 1997 WL 403401 at * 24, invalidating 47 C.F.R. §§ 51.305(a)(4) and 51.311(c). 47 C.F.R. 51.311(c) provided, in pertinent part, that:

(Continued...)

interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself,"[6] the Eighth Circuit found that "[p]lainly, the Act does not require incumbent LECs to provide its competitors with superior quality interconnection."[7] Rather, it merely "establishes a floor below which the quality of the interconnection may not go."[8] The Eighth Circuit has, thus, effectively closed the door on the possibility that the FCC could mandate national standards for OSS to the extent that such standards would require an incumbent LEC to provide access to its OSS that differs from or exceeds the quality it provides to itself.

Tellingly, both the Petition and the comments filed by other competitive LECs reveal that petitioners are seeking the adoption of requirements that do, in fact, exceed parity.[9] For example, MCI states that "[m]inimum service levels are needed because in a given case service

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(...Continued)
To the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall, upon request, *be superior in quality to that which the incumbent LEC provides to itself.*

(emphasis added). 47 C.F.R. § 51.305(a)(4) imposed an equivalent requirement for superior quality interconnection to a LEC's network.

[6] 47 U.S.C. § 251(c)(2)(C).

[7] *Iowa Util. Bd*, 1997 WL 403401 at * 24.

[8] *Id.*

[9] ILECs subject to the OSS requirements of Act need do no more than modify their systems to the extent necessary to allow CLECs to use them. See Comments of the Independent Telephone & Telecommunications Alliance, CC Docket No. 96-98, RM 9101 at 10-11 (filed July 10, 1997) ("ITTA Comments").

provided at parity may not be *reasonable*."[10] Similarly, AT&T seeks to replace the Congressionally-mandated "parity" standard by suggesting that "[o]rders must also be provisioned in a nondiscriminatory and *commercially reasonable* manner."[11] By urging the FCC to establish an independent standard such as "commercially reasonable" for OSS requirements without regard to an ILEC's own systems and capabilities, these petitioners are asking for exactly what the Eighth Circuit rejected -- an FCC requirement that ILECs provide above-parity OSS to CLECs.

Other petitioners attempt to justify their requests for above-parity interconnection under the Act's non-discrimination requirement.[12] The Eighth Circuit squarely rejected this same argument when raised by the FCC in defense of its above-parity rules, holding that the nondiscrimination requirements contained in Section 251 did not justify FCC rules requiring ILECs to provide above-parity interconnection. The Court explained that the obligation to provide nondiscriminatory access to interconnection "merely prevents an incumbent LEC from arbitrarily treating some of its competing carriers differently than others . . . [but] does not mandate that incumbent LECs cater to every desire of every requesting carrier."[13] In light of

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[10] Comments of MCI Telecommunications Corporation to the Petition for Expedited Rulemaking filed by LCI International Telecom Corp. and the Competitive Telecommunications Association, CC Docket No. 96-98, RM-9101 at iii (filed July 10, 1997) (emphasis added) ("MCI Comments").

[11] AT&T Comments on Petition for Expedited Rulemaking, CC Docket No. 96-98, RM-9101 at 3, 17 (filed July 10, 1997) (emphasis added) ("AT&T Comments").

[12] *See, e.g.*, Comments of Telco Communications Group, CC Docket No. 96-98, RM-9101 at 3-4 (filed July 10, 1997) ("Telco Comments").

[13] *Iowa Util. Bd.*, 1997 WL 403401 at * 24.

the court's plain language and firm rejection of this position, it is clear that petitioners' suggestion that ILECs be compelled to provide above-parity OSS is unsupported by Section 251 of the Telecommunications Act.

B. Other Sections of Title II Provide No Authority for the Imposition of OSS Standards

Moreover, it is clear from the terms of the Telecommunications Act and from the Eighth Circuit's analysis in *Iowa Utilities Board* that the FCC lacks authority to regulate the terms and conditions under which OSS is made available by incumbent LECs under any of the statute's other provisions.[14] Section 2(b) of the Communications Act of 1934, which was retained by the Telecommunications Act, serves to deny the FCC regulatory authority over the "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service," instead reserving this authority to the states.[15] The Supreme Court declared in *Louisiana Public Serv. Comm'n v. FCC*,[16] that Section 2(b) "fences off intrastate matters from FCC regulation," and that only an "unambiguous" and "straightforward" grant of specific intrastate jurisdiction to the FCC can "override the command of [§ 2(b)]."[17] In concluding that the FCC had overstepped its jurisdictional bounds

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[14] *See* SNET Comments, CC Docket No. 96-98 at 8-10 (filed July 10, 1997); Comments in Support of LCI-Comptel's Petition for Expedited Rulemaking by the Association for Local Telecommunications Services, CC Docket No. 96-98 at 3 (filed July 10, 1997) ("ALTS Comments").

[15] 47 U.S.C. § 152(b).

[16] 476 U.S. 355 (1986).

[17] *Louisiana Public Serv. Comm'n*, 476 U.S. at 377 (1986).

in issuing several of its local competition rules, the Eighth Circuit followed this ruling and explained that this "Louisiana-built fence is hog tight, horse high, and bull strong, preventing the FCC from intruding on the states' intrastate turf."[18]

The Eighth Circuit found that the Act's local competition provisions (*i.e.*, 47 U.S.C. §§ 251, et seq.) were "fundamentally intrastate in nature"[19] and upheld the authority of the states -- and not the FCC -- to regulate in this area. The Court held that the Telecommunications Act limits the FCC's authority to adopt rules governing local competition, and establishes only discrete breaks in the "fence" erected by Section 2(b) where Congress "expressly called for the FCC's involvement."[20] According to the Court, Section 251(d)(2),[21] which calls for the Commission to determine what network elements should be made available for the purposes of the unbundling requirement of Section 251(c)(3), is one such designated area of FCC authroity. But, the fact that the Commission may have authority to identify OSS as a network element that must be made available by incumbent LECs does not open the door to allow the FCC to define OSS to include capabilities that do not currently exist in ILEC networks or to regulate all terms under which OSS must be made available.

As confirmed by the Eighth Circuit's rejection of the FCC's "pick and choose" rule, Congress has left it to private parties and the states to determine the conditions under which

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[18] *Iowa Util. Bd.*, 1997 WL 403401 at * 9.

[19] *Id.*

[20] *Id.* at * 3, n. 10.

[21] *Id.* Accordingly, the Eighth Circuit upheld 47 C.F.R. § 51.319(f), which purports to implement the FCC's authority under 47 U.S.C. § 251(d)(2) to determine that OSS is a network element subject to the unbundling requirements of Section 251(c)(3). *Id.* at * 18-21.

those elements will be provided, through negotiation and arbitration.[22] Imposition of detailed federal standards in this area would effectively override the state-supervised bargaining process mandated by Congress and replace it with a new federal regulatory construct in a manner not envisioned by the Act. Accordingly, promulgation of such standards would be flatly inconsistent with the Telecommunications Act and with the Eighth Circuit's ruling in *Iowa Utilities Board*.

Furthermore, national standards for OSS are unnecessary to achieve the purposes of the local competition provisions of the Telecommunications Act. Many commenters pointed out that substantial progress towards promulgating standards for a range of OSS functions is being made by independent industry standard-setting bodies.[23] In fact, a number of carriers seeking competitive entry in local markets have urged that these industry bodies be allowed to make progress on their own.[24] In its initial comments in this proceeding, ITTA chronicled the progress made by one of these bodies, the Ordering and Billing Forum ("OBF"), which includes both CLEC and ILEC representation.[25] In addition, several commenters demonstrate that states -- which are given primary regulatory authority over this area, *see infra* Section

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[22] *See Iowa Util. Bd.*, 1997 WL 403401 at * 8-11.

[23] *See, e.g.*, Comments of Bell Atlantic, CC Docket No. 96-98, RM-9101 at 2-3 (filed July 10, 1997); Comments of United States Telephone Association, CC Docket No. 96-98, RM-9101 at 4-5 (filed July 10, 1997).

[24] *See e.g.*, Comments of Sprint Corporation, CC Docket No. 96-98, RM-9101 at 3 (filed July 10, 1997) ("OBF and other technical fora are the logical place to have industry participants meet to establish standards. OBF is already engaged in defining standards for the order entry used to provision local service").

[25] *See* ITTA Comments at 5-7.

II.C.2 -- are addressing OSS issues in detail through rulemakings and through arbitration of interconnection agreements.[26] The intrusion of the FCC into these ongoing processes would not only be duplicative, but would likely be counterproductive, time-consuming and disruptive.

Finally, the practical impact of imposing new national standards for access to an ILEC's OSS would be to circumvent the hundreds of agreements between incumbent LECs and CLECs that have been reached through bilateral negotiation between the parties or through arbitration and approval by state commissions.[27] This new approach to OSS would require renegotiation and rearbitration of these agreements, which would burden ILECs, CLECs and the state commissions and, ultimately, would harm consumers by delaying competition. The public interest clearly would not be served by such a result.

C. Congress Has Largely Exempted Mid-Size and Rural Telcos From Section 251(b) and (c) Requirements

The attempted imposition of uniform national standards for OSS also would be inconsistent with Congress' policy that all LECs cannot and should not be treated exactly alike. Acknowledging that mid-size and rural telephone companies may face unique and daunting problems in the new regulatory environment, Congress provided mechanisms to

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[26] *See* Opposition of U S WEST, CC Docket No. 96-98, RM-9101, 13-15 (filed July 10, 1997) (noting that LCI's own appendices cite to extensive ongoing state proceedings); Comments of BellSouth at 16-19 (nine-state interconnection agreement between BellSouth and AT&T has resolved numerous OSS issues, including provision of quality-of-service measurements).

[27] *See, e.g.*, Comments of United States Telephone Association, CC Docket 96-98, RM-9101 at 4, n.12 (filed July 10, 1997) (citing several reports that document the hundreds of approved and pending interconnection agreements reached between CLECs and ILECs) ("USTA Comments").

relieve such carriers from the potential harmful impact of the most onerous local competition requirements.[28] Such relief is manifestly necessary in light of the fact that ITTA's member companies are dwarfed by many of the large, well-financed, national and global carriers seeking to saddle ILECs with massive expenditures for upgraded OSS in this proceeding.

Section 251(f) of the Telecommunications Act reflects Congress' recognition of the likelihood that rural and mid-size telcos may be unreasonably burdened by "one-size-fits-all" interconnection requirements, and provides for their exemption from many of the requirements established under that Section. Section 251(f)(1) declares rural telephone companies presumptively exempt from the obligation to provide interconnection, resale, and unbundled elements under Section 251(c), which includes access to OSS, absent a determination by the relevant state commission to the contrary. They therefore would be excluded from any above-parity OSS standards the Commission may promulgate.[29] Similar relief is available to mid-size telcos generally through Section 251(f)(2), which allows those telcos to petition state commissions for suspension or modification of any requirement under § 251(b) or (c) that is shown to have a significant adverse impact on users, to be technically infeasible, or to be unduly economically burdensome.[30]

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[28] *See, e.g.,* H.R. Conf. Rep. No. 104-458 (1996) at 119 (rural telephone companies should be protected "particularly when . . . fac[ing] competition from a telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater than the resources of the [rural telephone] company").

[29] 47 U.S.C. § 251(f)(1).

[30] 47 U.S.C. § 251(f)(2).

The few commenters who support the imposition of OSS standards on mid-sized telcos fail to address the inconsistency of their position with the Congressional policy of creating an exemption for such companies from most requirements of Section 251. For example, AT&T urged imposition, on *all* ILECs, of specific functional performance standards proposed by the Local Competition Users Group ("LCUG"), without acknowledging the differing circumstances among and between various classifications of ILECs identified by Congress in Section 251.[31]

Similarly, General Communication, Inc. ("GCI") argued that although "[s]maller ILECs may claim that they can not meet the standards outlined in the Petition . . . the Commission and the state commissions must make it clear that an ILEC must come into compliance with the standards within a specific timeframe."[32] GCI also states that the FCC should additionally require small ILECs to submit "quarterly parity reports" which demonstrate their efforts to comply with the standards.[33] GCI never explains how merely allowing small ILECs the opportunity "during the arbitration process to prove that they cannot meet the standards"[34] can accommodate the unique circumstances facing ITTA members, or can square with the Congressional mandate established in Section 251(f).

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[31] *See* Comments of AT&T at 13.

[32] Comments of General Communication, Inc., CC Docket No. 96-98 at 2 (filed July 10, 1997) ("GCI Comments").

[33] *Id.* at 2-3.

[34] *Id.* at 2.

As explained by ITTA in its comments, undifferentiated nationwide imposition of OSS standards on large and small LECs alike, as proposed by petitioners, would unreasonably burden smaller LECs, including ITTA's members.[35] It would thus require them to seek individual exemptions from their state commissions every time a CLEC requests above-parity access to OSS. Such petitions would waste resources and needlessly burden both affected ILECs and state commissions and, ultimately, slow progress toward local competition.

D. ILEC Participation in the Interexchange Market May Not Be Conditioned on Implementation of OSS Standards

Several commenters have urged the Commission to establish a mechanism to punish incumbent LECs that do not comply with their proposed OSS standards by applying the provisions of Section 271 and preventing them from soliciting new customers for long distance service.[36] This suggestion clearly underscores the failure of these commentors to recognize Congress' policy mandate to treat different sized companies differently. Congress established Section 271 to require Bell Operating Companies -- specifically listing them by name -- to satisfy certain conditions before allowing them to provide interexchange service.[37] Congress' decision not to include independent LECs in the list of companies subject to the requirements

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[35] ITTA Comments at 17-18.

[36] *See, e.g.,* MCI Comments at 10; Comments of WorldCom, Inc. on Petition for Expedited Rulemaking, CC Docket No. 96-98, RM-9101 at 13 (filed July 10, 1997); Comments of the Competitive Telecommunications Association (CompTel), CC Docket No. 96-98, RM-9101 at 6-7 (filed July 10. 1997); Telco Comments at 5; ALTS Comments at 12-15.

[37] *See* 1997 Telecommunications Act, Section 3(a)(2), listing 20 individual companies considered "Bell Operating Companies."

of Section 271 was clearly deliberate, and no commenter in this proceeding suggests otherwise.[38] No basis has been suggested upon which the Commission could rewrite the 1996 Act and its own prior decisions and, thereby, subject independent LECs to the RBOC provisions of Section 271.

Similarly, nothing in Section 251 or any other provision of the Telecommunications Act empowers the Commission to prevent or slow ILEC entrance into the interexchange market as a sanction for alleged failure to provide non-discriminatory access to OSS. In point of fact most ITTA member companies have offered interexchange service, principally on a resale basis, for years. Barring these companies from offering interexchange service to protect the large, multi-national interexchange companies that dominate the market would effectively turn the 1996 Act on its head. Interexchange commenters urging the imposition of such sanctions are simply attempting to further protect their entrenched interexchange market positions.[39] Their arguments should likewise be rejected.

III. SHOULD THE COMMISSION SEEK TO IMPOSE OSS STANDARDS, DESPITE COMPELLING EVIDENCE OF ITS LACK OF AUTHORITY TO DO SO, THE UNIQUE NEEDS OF MID-SIZE TELCOS SHOULD BE TAKEN INTO ACCOUNT

If the Commission nevertheless decides to grant any of the relief the petitioners request, it should avoid imposing a single inflexible national standard on all ILECs regardless

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[38] Indeed, even AT&T acknowledges that the Commission lacks authority under Section 271, or any other provision in Title II for that matter, to impose such sanctions on ILECs. AT&T Comments at 31-32 (suggesting instead that such authority can be derived from Section 312, governing administrative sanctions on radio licensees, and Section 154(i))).

[39] AT&T Comments at 31-32. MCI Comments at 11.

of size and available resources. As noted above, *see supra* at II.B., rural telcos are presumptively exempt from requirements issued pursuant to Section 251(c) of the Act, which forms the basis of petitioners' claim for relief, and mid-size telcos may petition their state commissions for exemption from such requirements. A unitary national OSS policy would ignore the natural distinctions that divide different sized telcos. In the interests of administrative efficiency and rational decisionmaking, the FCC should at least require that the unique needs of mid-size telcos be appropriately accommodated and that adequate safeguards, transition periods and cost recovery are ensured.

Furthermore, as ITTA has demonstrated in its earlier Comments in this proceeding, there are special concerns involving mid-size and rural telcos that warrant attention in any assessment of OSS standards.[40] For example, mid-size telcos have fewer customers than larger ILECs with a correspondingly smaller revenue base, making CLEC-imposed costs particularly burdensome. Commenters supporting OSS standards for mid-size telcos ignore the adverse impact imposition of such standards is likely to have on ratepayers and rural areas.

For example, ITTA members have limited staff and technical resources to change out equipment and establish new operations. As a result, they would require extended implementation deadlines and other modifications in order to avoid otherwise unnecessary rate increases or disruptions in service. In calling for the Commission to require "an immediate transition to standardized OSS functions," commenters such as TCG entirely ignore the

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[40] *See* ITTA Comments at 14-18; Comments of Aliant Communications Co., RM-9101 at 3-4 (filed July 10, 1997); SNET Comments at 5-7. *See also* Comments of USN Communications, Inc., CC Docket 96-98 at 3-5 (filed July 10, 1997) (explaining that imposing OSS standards would be detrimental to CLECs for the very reasons it would be detrimental to small ILECs)

(Continued...)

substantial hardship such a rule would impose on ITTA members and their ratepayers.[41] GCI's comments are equally unreasonable, not only demanding that the FCC require compliance with the standards within six months, but also urging that the Commission require small ILECs to submit "quarterly parity reports" detailing their efforts to meet these standards.[42]

Moreover, due both to the smaller revenue base and modest scale of many ITTA members' operations in comparison to larger ILECs and CLECs, some members' OSS facilities may lag significantly behind the technology petitioners propose as an industry standard. Again, such variances in levels and types of technology used by telcos across the country is another reason why Congress established "parity" as the standard for interconnection and unbundled elements, rather than national baselines. To the extent the standards imposed are radically inconsistent with the OSS technology currently employed by ITTA members, relief in the form of exemptions or grandfathering will be required. Modest, CLEC-financed OSS upgrades may be possible, but ITTA members still will require a reasonable transition period or deferred implementation schedule to allow time to make the required improvements. The length and conditions of any transition period would, of course, be dependent on the demands of the standards imposed and the scope of the changes required.

(...Continued)
("USN Comments").

[41] *See* TCG Comments at 11.

[42] *See* GCI Comments at 2-3.

IV. CONCLUSION

The national OSS standards sought by petitioners are neither necessary nor authorized by the Telecommunications Act. Section 251(c)(2)(C) of the Telecommunications Act provides that ILECs must make available to requesting carriers OSS that is at least equal in quality to the OSS it provides to itself. The Eighth Circuit found that this section requires parity and nothing more, declaring that the FCC cannot require ILECs to satisfy CLECs' requests for service that exceeds the levels it provides to itself. The Eighth Circuit further reinforced the traditional separation of regulatory authority between the states and the FCC, holding that the FCC lacks authority to intrude into the local competition arena except in certain limited areas -- none of which apply here. Moreover, the Act specifically establishes that the terms and conditions of interconnection, including the availability of OSS, are to be determined, if not by private negotiation, then by the states.

Accordingly, petitioners' request for the development and enforcement of national standards for OSS is inconsistent with the plain language and the basic regulatory construct of the Act, and therefore should be denied. But, if the FCC nonetheless attempts to adopt such standards, it should make appropriate accommodations for the special situations of rural and mid-size telcos.

Respectfully submitted,

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July 30, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July, 1997, I caused copies of the foregoing Comments of The Independent Telephone & Telecommunications Alliance to be served on the following:

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